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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

INITIAL COMMENTS

OF

AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION ("ACTA")

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SUMMARY

America's Carriers Telecommunication Association ("ACTA") urges the Commission to adopt national standards and consider a waiver procedure to accommodate any unique state needs shown not to be met by application of the national policy rules. Similarly, national standards should govern interconnection agreements, whether reached by arbitration or created as general statements of terms and conditions.

The Commission must retain and must employ its enforcement powers through its complaint process and should also devise new enforcement procedures to ensure compliance with its rules and policies. On the other hand, the Commission should not impose on new entrants, obligations imposed on incumbent LECs.

Incumbent LECs are showing their true colors by employing tactics unquestionably designed to frustrate and delay competitive entry. Positions are being asserted that refuse to provide essential information on interconnection capabilities. The Commission should not tolerate such conduct and follow the example of states like Arkansas and require the incumbent LECs to reveal their pre-enactment interconnection agreements.

Similarly, the Commission should outlaw the withholding of any services for resale; of using their special control to engage in arbitrary actions designed to denigrate competitors or interfere with their customer relationships.

The points of interconnection should be defined broadly, including at a minimum, any point of interconnection used prior to enactment, end offices, tandems and any other point for which the incumbent LEC fails to carry the burden of proof that interconnection is not feasible. Conversely, incumbents LECs should not be permitted to burden new entrants with unwanted or unnecessary

network designs or components, to restrict types of traffic, or to limit types of connections or access to switching centers or the configuration of trunks.

Standards for installation, maintenance and repair, and service intervals should be adopted, as well as for billing, provisioning and service quality. Such standards must ensure parity with the incumbent LECs.

Collocation should include transmission and concentrating equipment, leasing of transport facilities, priced at TSLRIC.

Unbundling should be implemented based on the following goals - availability for interexchange as well as local service; ability to be used for local exchange or local access services mirroring the incumbent LECs retail services or creating wholly new services. Most importantly, the solution is not to allow the determinations on unbundling to be bogged down in a never-ending search for a list of elements. Rather, the rule should be that all elements are available for unbundling subject to a showing that the public interest would be harmed or that anti-competitive results would occur. In addition, switching capacity and AIN triggers should be considered as subject to unbundling.

Number portability should be ordered by a date certain and effective oversight provided to prevent or eliminate abuse during the use on interim solutions.

Pricing should be based on TSLRIC. Use of cost studies is imperative despite the administrative burdens reliance on their use may entail.

Local resale objectives should follow the recommendations presented to the Illinois Commerce Commission by AT&T, LDDS Worldcom and the ICC's own staff as detailed in the body

of ACTA's comments. That level of detail is too great to effectively summarize here, but the value of understanding them is all important.

What is required for resale has been called a "total local exchange wholesale service" which includes a panoply of services, and also operational interfaces or support systems for data transfer requirements and administrative requirements affecting provisioning of local service. Determining the wholesale price should be based on sound economic analysis, which indicates that avoidable costs should result in a discount of 25% and more off the incumbent LECs retail prices.

A proper wholesale price structure requires the application of a simple rule - each retail service rate must have a corresponding wholesale service rate with imputation applied to both wholesale and retail rates.

In arriving at costs of the incumbent LECs which should be included or excluded, the starting point is to measure costs changes that would occur if 100% of services available for resale were converted from a retail environment to a wholesale environment. However, two additional factors may need to be added to the analysis - the inefficiencies in the LECs' retail and wholesale operations and additional costs that may be avoided but which may not be included in the costs being analyzed. These additional costs may include support expenses, advertising, uncollectibles, and incremental wholesale costs. Wholesale prices should then be tariffed, supported by workpapers and a description of the methodology of cost avoidance applied.

Introduction

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits initial comments in the captioned rulemaking by which the Commission is undertaking to bring about effective competition to the present monopoly provision of local exchange telephone service. This proceeding is pivotal to effecting the goals of Congress in enacting the Telecommunications Act of 1996 ("Act"). In this proceeding the Commission intends to fashion policies and rules to implement the interconnection and resale of local service requirements embodied in Section 251 of the Act.

ACTA is a national trade association with 165 members, the core membership of which is comprised of small to mid-sized resale carriers providing competitive long distance services on a regional or national basis. ACTA's members have withstood the test of an unevenly competitive marketplace for over a decade. And despite the many handicaps small businesses face, particularly in a regulated-monopoly industry, now turned oligopolistic, have not only survived, but in many cases advanced, while providing unique and more cost-effective services to their customers.

ACTA's members are keenly aware that the face of competition, and the environment in which it will be conducted, has changed and will rapidly continue to do so. To be certain, such changes have been unleashed by the passage of the Act; but moreover, what the new legislation has begun, may quickly be overshadowed by advances in technology, or certainly at least result in a far different marketplace than that on which the legislative enactment in February of this year was primarily based.

Focus of ACTA's Initial Comments

Few proceedings have raised such a multitude of issues. Some of the issues are broad and overarching and address the means by which the Commission may seek to establish a platform of policies on which to shape the tools by which to accomplish the core requirements of the new legislative goals of the 1996 Act. Other issues are framed in exacting detail intending to cover the unavoidable "fine print" of implementation once a clear policy platform is decided. Adding to the burden is the extremely short time frame provided to decide these issues and that their resolution implicates numerous other issues addressed in related proceedings.

Given the magnitude of this undertaking, ACTA has adopted the following approach in preparing these initial comments. ACTA will focus on the broader issues forming the base of the policy platforms which must be constructed in order to attach the detailed framework of more detailed and specific rules and requirements. With appropriate policy platforms in place, ACTA hopes that they will serve as forward-looking guidelines on which to work out the details over a longer period of time.

National vs. State Policy Rules

ACTA urges the Commission to adopt explicit, national policy rules as the only realistic approach to foster the goals of the 1996 Act. For now, the Commission should subordinate the deference to the regulatory comity with the states, which the Commission consistently seeks to honor and observe, and leave to another day the task of balancing the possible public interests that may be represented by allowing regulatory variability to exist among the states.

The reasons to adopt a national policy framework are well articulated in the NPRM and need not be repeated here. Moreover, should it be shown in practice that specific national policy

rules unduly constrain the states' ability to adequately address their respective unique policy concerns specific to their jurisdictions, a waiver policy or similar procedure could be made available. Such a procedure would still allow the states to experiment with different regulatory schemes where there isn't sufficient evidence to select the optimal policy and if such experimentation suggests a need to deviate from national policy in order to accommodate state-specific variations in technological, geographical or demographic conditions, appropriate action could be taken by the Commission to grant an exemption or waiver.

The construction of the federal act incorporates the concept of a national telecommunication policy structure in its assignment of duties to the FCC under Sections 251, 252 and 271. Because the law rests on "the need to swiftly introduce telecommunication competition," the Commission has ample cause to embrace a national uniform regulatory framework as the necessary means to attain that goal. A "patchwork" of state rules will only place new entrants into a regulatory maze that will waste scarce resources and artificially drive up costs and, therefore, prices to consumers, and perpetuate and extend the dominance of larger deep-pocket competitors better able to withstand the non-remunerative expenditures of time, effort and money needed in attempting to navigate the maze.

Successful deployment of local competition requires as predictable a set of procedures, standards, and business expectations as possible. It serves the purposes of delay to argue, as the RBOCs do, that detailed regulations "risk skewing the negotiated settlement." But the argument proves too much. A single set of "detailed regulations" is preferable to 51 detailed sets of regulations. Moreover, there is no reason to presume that, at the outset, there needs be an

excessively detailed set of regulations. Competition may be better served by broader guidelines, the infringement of which are subject to swift and certain remedial action.

For that matter, a single set of "detailed regulations" or a single set of broader guidelines swiftly enforced, is also preferable to 51 sets of vague and ill-defined requirements, the implementation and interpretation of which would again be magnified 51 fold. Such a system results in a regulatory quagmire negotiable only by the unlimited resources for such efforts of the incumbent LEC. For all these reasons, and the many cited by the FCC, only a national policy framework will facilitate the Act's intended goal of fostering marketplace competition.

Federal Standards for Terms and Conditions

The Commission should also adopt a single set of standards with which both arbitrated agreements and BOC general statements of interconnection terms and conditions must comply. Furthermore, because under the 1996 Act, the Commission must assume a state commission's responsibilities in the event that the state fails to act, and because the 1996 Act mandates that the state commissions must follow FCC rules, it is clear that Congress' intent is that the provisions of Sections 251 and 252 are applicable to both interstate and intrastate jurisdictions.

Enforcement Authority

The FCC must be part of the enforcement mechanisms ensuring compliance with Sections 251 and 252. There is nothing in the 1996 Act or under any common sense analysis that relieves the Commission of either its responsibilities under Section 208 of the 1934 Act or its status as the national "expert agency." This is reinforced by the need for adoption and enforcement of national policy rules as argued previously. Moreover, in the event certain specific policy initiatives are dealt back to the states through ACTA's suggested waiver approach, the

enforcement of such state specific policies may rightfully be enforced by the states under such delegated responsibilities. At the same time, while the courts are not usually the proper entities to enforce telecommunications policies, once such policies are promulgated, there is no reason not to permit the courts to exercise their inherent function of enforcing the laws and regulations according to their established terms.

Section 251(c) Obligations and New Entrants

ACTA agrees with the Commission that there are sound reasons the Commission should not impose on new entrants any obligations that are imposed on incumbent LECs.

> [I]mposing on new entrants requirements that the 1996 Act imposes on incumbent LECs would not be consistent with the Act's distinction between the obligations of all telecommunications carriers, all LECs and the additional obligations of all incumbent LECs.

Furthermore, when it comes time to classifying a local exchange carrier or competitive local exchange service provider as an incumbent LEC, this responsibility should reside with the Commission pursuant to the express provisions of Section 251(h)(2).

This is a matter that would, at first notice, seem to be one for future concern while more immediate substantive issues are addressed. Yet, some states already are developing, or have issued rules that envision future incorporation of new entrants into regulatory models applied to incumbent LECs. For example, Colorado's unbundling and interconnection rules require that a new entrant unbundle its network three years after certification. Not only do such rules usurp federal authority under Section 251(h)(2); they possess a significant potential to damage a new entrant's commitment to infrastructure investment.

The imposition of specific requirements on incumbent LECs simply recognizes the inherent and significant advantages provided them by their ownership of ubiquitous networks and

their deeply entrenched market presence. It is difficult to perceive that such advantages will ever be fully overcome, and even less likely to be obtained, by new entrants. Given the embryonic market presence of the new entrants, any attempt to impose incumbent LEC requirements on new entrants simply distorts otherwise rational public policy schemes applicable to monopoly companies operating within a guaranteed revenue environment into an irrational burden handicapping competition.

Guidelines Regarding Good Faith Negotiation.

It is most appropriate to begin the discussion of the issues here with the quote of one of the major incumbent LECs advocating its own entry as a new competitive entrant in a foreign market. A US WEST affiliate (US West International) argued, in response to the dominant carrier in the market it sought to enter, that "it is . . . in the dominant operators self-interest to make interconnection as difficult and expensive as possible." With the shoe on the other foot, US WEST and other RBOCs are practicing that which they condemn elsewhere in the world where they are not in charge. The Commission should recognize the inviolate truth of US WEST's own words and promptly prohibit the various tactics the incumbent LECS are using to delay and frustrate good faith negotiations. Examples (by no means exhaustive) of these tactics abound.

Requiring non-disclosure forms to be executed;

Requiring new entrants to execute affidavits attesting that negotiated agreements comply with Sec. 271 of the 1996 Act ;

Requiring new entrants divulge proprietary business strategies regarding marketing plans or service provisioning;

Refusing to disclose pre-enactment interconnection agreements;

Fumbling provisioning orders;

Undersizing trunks causing fast busy signals;

Withdrawing services to prevent resale;

Refusing to permit resale of "proprietary" services, contract services, grandfathered services;

Refusing to negotiate until internal policy decisions are made on all aspects of potential interconnection terms and conditions; and

Refusing to offer a realistic "wholesale" price for local resale.

Existing Agreements

Section 252(a)(1) states that agreements "including any interconnection agreement negotiated before the date of the enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (a) of this section." This plain language unequivocally requires the submission of all existing agreements, including agreements between LECs, to state commissions.

The Arkansas Public Service Commission ruled accordingly. In its Docket No. 960098-U, the Arkansas PSC ordered that the incumbent LECs file "all jurisdictional interconnection agreements negotiated prior to the date of enactment of the Telecommunications Act . . . . Such filings shall include all negotiated interconnection agreements between SWBT or GTE and any telecommunications carrier, including local exchange carriers, within the State of Arkansas." In ACTA's view, this action comports fully with intent of Congress and with plain common sense. The terms and conditions of these pre-existing agreements provide invaluable information on important aspects on the technical, economic and operational feasibility of interconnection capabilities.

Contrary, however, to the judicious action of the Arkansas PSC, the Texas PUC has gone in the opposite direction from what the 1996 Act requires. In Texas, pursuant to its "14440 - Interconnection Rule," incumbent LECS are able to submit pre-enactment agreements between LECs under selective circumstances. Under Texas' interconnection rule, the agreement must be filed only if a party negotiating interconnection requests disclosure, and a request is considered to be valid only if the agreement relates to "interconnection arrangements for similar traffic." In addition, the information is subject to a non-disclosure agreement. These limitations are anticompetitive obstacles designed to deliberately shield relevant information from competitors. It is sad that the Texas PUC has become an accomplice to these tactics.

GTE seeks to withhold access to these pre-existing agreements by resort to another ruse. GTE asserts that pre-existing agreements are "vestiges of the monopoly telephone environment . . . [and] have no relevance to the interconnection arrangements contemplated" under a competitive environment. To the contrary, these agreements map out the topology of interconnection by disclosing actual economic, technological and operational feasibilities as they existed and as they were designed, developed, implemented, operated and managed between two willing parties -- in short, these pre-existing agreements are the best road map to workable interconnection possible. All of this is true because these agreements were made based on the uncomplicated basis of the actual capabilities on plant, facilities and equipment and well-managed personnel without fear of competitive inroads. In that manner, these pre-existing agreements are the best evidence of what competitive interconnection should entail. Secreting the agreements under the cloak of "irrelevance" is patently indefensible.

Resold LEC Retail Services

Specific examples of incumbent LECs withholding promotional and grandfathered offers from being resold by new competitors, is US WEST's cancellation of its Centrex offering, specifically to block new entrants from reselling that service. GTE filed revised resale tariffs in Texas and testified that they would not allow promotional offers to be resold. Ironically, GTE then filed interLATA tariffs almost simultaneously as it positioned its operating companies to enter the competitive marketplace.

Another troublesome area reported by ACTA members involves the situation when the incumbent LEC does not offer intraLATA 1+ dialing parity. Some incumbents, such as GTE, have stated their intention to use their unique position as "service gatekeepers" to gain competitive advantage. The way this obstruction works is as follows. In the event that the end user does not pay GTE for its intraLATA toll services, GTE will disconnect both: (1) the customer's access to all toll services (intraLATA and interLATA), regardless of whether the customer is using another interexchange carrier for interLATA toll; and (2) the customer's local service, despite the fact that the reseller has paid the local service usage for that end user.

Such strategies are nothing more than a method to subvert new entrants. Interexchange carriers that directly bill their end users do not have the power to disconnect non-paying customers from their toll and local services. Either this must change or LECs who bill intraLATA usage directly should not be allowed to disconnect toll and local services when the end user is a customer of the new entrant.

Interconnection, Collocation, and Unbundled Elements

The Commission should issue "uniform interconnection rules [that] would facilitate entry by competitors in multiple states by removing the need to comply with a multiplicity of state variations in technical and procedural requirements." Permitting the states to establish different approaches to interconnection erects needless barriers against the goal of fostering local market competition. Comprehensive business and network planning is pointless in any regulatory environment that arbitrarily shifts dramatically according to state boundaries.

Interconnection plans involve specific network configurations that entail formulating both engineering models as well as budget forecasts for equipment acquisitions. State variations would force new entrants to retreat constantly to square one in their planning processes and would be an enticing invitation to incumbent LECs to erect a multitude of handicaps hampering competitors efforts to employ economic efficiencies and, thereby, robbing consumers of the potential cost benefits. The lack of national standards would seriously reduce, if not prevent, "predictability and certainty." Without "predictability and certainty," there will be no competition.

"Technically Feasible Points" of Interconnection

While the LECs have indicated that specifying technically feasible interconnection points should be abandoned to the rough and tumble of negotiation, the LEC 800-pound Gorillas far outweigh their new opponents. Consequently, the Commission should define technical feasibility solely as an engineering item to be identified purely in terms of technical schematics unassociated with business issues. Business issues must be divorced from the purity of scientific capability as the 1996 Act clearly demands. Subjective business issues must yield to technological objectivity.

ACTA also supports the Commission's tentative conclusion that "if an incumbent LEC currently provides, or has provided in the past, interconnection to any other carrier at [a given] point, . . . all incumbent LECs that employ similar network technology should be required to make interconnection at such points available to requesting carriers." The Commission should reject any attempt to refuse interconnection at these points. The Commission should also reject the LECs' requests that interconnection points be limited solely to points that "can be achieved under technology that is currently used by the incumbent LEC in the location where interconnection is requested at the time that requesting carrier submits its request . . . . [Memorandum Re Implementation of Section 251 prepared on behalf of Ameritech, et al.]

As to any other points of interconnection, the incumbent LEC must be made to carry the burden of proof in demonstrating that interconnection at a particular point is not technically feasible.

ACTA also urges the Commission to recognize that technically feasible interconnection points are not stagnant elements. Technological changes will impact the viability of accessing additional connections. Accordingly, as indicated by the NPRM, the federal standards should be modified periodically.

There is a consensus on the competitive side of the line, and in some states, that interconnection points should include, but not be limited to, tandem switches, end office switches or other wire centers, points outside of a provider's wire center that the provider controls, or any other meet point between the end user and the new entrant. Points of interconnection ("POIs") can be established through meet point, collocation or any other mutually agreed-upon method. At a minimum, at least one POI must be provided within each local calling area or, if requested

by the new entrant, a group of contiguous exchange areas within a single LATA. However, this requirement does not preclude additional POIs at mutually agreed upon points.

In addition, the incumbent should not be allowed to require multiple POIs within a single local calling area or a group of contiguous exchange areas within a single LATA.

Each telecommunications carrier should be responsible for the cost, construction and maintenance of the facilities on its side of the point of interconnection, unless alternate arrangements have been mutually agreed upon. Carriers should share equally the cost of the meet point.

Carriers should be prohibited from imposing on one another inefficient network designs, including designs that are noncompliant with industry-accepted technical standards. Incumbent LECs also should be prohibited from requiring the installation of unnecessary equipment. However, in the event an incumbent LEC agrees to provide a less efficient network configuration or an efficient network, albeit with nonstandard technical specifications, the cost to be incurred must be paid by the carrier requesting the non-standard configuration.

Other areas of concern include the following. The incumbent LEC must not restrict the types of traffic delivered to/from the POI(s). Interconnection should encompass both lineside and trunkside connections. Trunking should be available to any switching center designated by either carrier with the carrier having the option to install one-way or two-way trunks.

Uniform Standards for Setting Nondiscriminatory Terms and Conditions

Regarding installation, maintenance, and repair of the incumbent LEC's portion of the interconnection, performance should be nondiscriminatory and should be in compliance with delivery deadlines as mandated by state commissions. Standard intervals should be issued for

delivery of Firm Order Commitments (FOC), Design Layout Reports (DTR), facilities installation and repairs. Any mandated performance fees paid by the carrier requesting interconnection to the incumbent LEC will function as significant barriers to entry. Therefore, new entrants should not be forced to pay fees to their competitor.

The terms and conditions of provisioning, billing and service standards is a critical thread that weaves throughout the NPRM by impacting interconnection, network unbundling and the resale of a LEC's retail services. Customer provisioning, billing and service standards must be at parity with the incumbent LEC. Parity will be nonexistent unless these standards are articulated by the FCC in sufficient detail to ensure that the ordering, billing and repair processes are not overly cumbersome. Network technological parity becomes almost a moot point if service parity is an impossibility due to provisioning and repair procedures being constructed as administrative nightmares. Rather than being inconsequential matters, these procedures, in fact, will mold an end user's perception of the viability of competition. If a LEC denies a new entrant parity access to critical service information and thereby increases the opportunity for service errors as well as delays, it is the new entrant, not the "staunch incumbent," that the end user will perceive to be at fault. Because new entrants are forced to rely on the incumbent, the paradox is that provisioning and service processes will be controlled by the incumbent whose self-interest is to ward off the very competition that these processes signify. If the Commission needs any evidence of the incumbent carrier's ability and willingness to use such tactics against competitors it need only reflect on the history of the interexchange industry, beginning with the deeds leading to the Divestiture of 1982 and the post-Divestiture activities of AT&T against SDN resellers and 800 aggregators.

Consequently, real-time, automated system interfaces must be available. Multiple automated interfaces may be permissible, but the incumbent should not provision a mechanism such as electronic bonding that entails significant capital resources in order for the new entrant to use the interface. The new entrant must be able to have real-time automated access to LEC service ordering systems that include information regarding pre-service ordering functionalities for processing customer service orders, telephone number assignment and activation capability, telephone line card assignment. line information database (LIDS), customer account service and equipment records, the ability to order additional services for end users, primary interexchange choices (including jurisdictional indicators for interLATA and intraLATA PIC and PIC freeze requests), customer service and equipment records as well as customer payment history. Entrants also must be given immediate access to loop assignment functions, feature and service availability and scheduling intervals.

Furthermore, the new entrant, in order to provision service on parity with the incumbent, also should have access on a real-time automated basis to systems providing access to update 911 systems, directory assistance database information, the ability to monitor local usage, Carrier Access Billing System ("CABS") data and Customer Account Record Entry ("CARE") information.

System interfaces should provide any provisioning requirements for ordering and order receipt confirmation, verification of installation date, and installation status. End user data must be partitioned to secure confidentiality for proprietary information.

For trouble resolution, electronic interfaces should allow access on a real-time basis to trouble entry, trouble report status, estimated time to repair, incumbent LEC trouble ticket

number, trouble escalation and network surveillance capability. Unless these interfaces are provisioned, competition will be hamstrung by the cumbersome, inefficient mechanisms that the LECs currently offer new entrants. In order to provision services, competitors are forced to manually complete a multitude of detailed, repetitive forms and then fax them to the LEC's one centralized location. Order and repair confirmation as well as telephone number assignment from the LEC also is via facsimile.

The forms themselves are overly burdensome, repetitive and in some instances overly intrusive in the information that is sought by the LEC. The fact that new entrants as well as the LECs are inputting this data manually and the fact that this input is repeated several times during the process by both the competitor and the incumbent dramatically increases not only the opportunity but also the probability that significant errors will occur.

Service standards should be monitored by requiring LECs to issue reports comparing a LEC's service to carriers against the LEC's service to its own operation. The quality of the network should be directly measured. Ironically, in an era of technological sophistication, the incumbents are insistent upon implementing a forward-looking communications law with technology from the past. Interestingly enough, the LECs have demonstrated the technological dexterity to develop mechanized interfaces available to their IXC customers and have instituted methods to partition IXC data in these databases in order to secure confidentiality. Yet in a competitive environment, the LECs have indicated an unwillingness to install system modifications in a timely manner.

Access to these databases is supported by 251(c)(3) and by the Act's definition of network elements as:

> a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission routing, or other provision of a telecommunications service.

Competitive marketing in the long distance service arena is successful to a large extent because PIC conversion is a seamless, transparent process. The procedures defined by the incumbent LECs for provisioning local service will assure that the conversion to a local competitive market is anything but a seamless, transparent process. These procedures guarantee that the new entrant does not provision service on the same terms and conditions as the incumbent LECs. They will compel the end user to view the competitor to be inefficient and unable to provide service in a manner comparable to the LEC. In effect, they could secure the defeat of the 1996 Act's goal of swiftly opening the floodgates of competition.

Terms and Conditions for Collocation

Allowable collocation equipment should include transmission and concentrating equipment. Collocators should be allowed to lease transport facilities from the incumbent LEC. Collocation costs should be priced at TSLRIC. Cost of converting existing virtual collocations to physical collocations should be paid by the incumbent LEC.

Unbundled Network Elements

Interpreting the definition of network element and the applications of purchasing unbundled elements will be an all important area which must be done right the first time. Section 3(45) defines "network elements" in terms of a facility or equipment as well as the features, functions and capabilities provided by such facility or equipment to provision telecommunication services. Telecommunication services includes both local as well as interexchange services.

Consequently, the unbundled elements can be used to provision services other than local service alone.

Furthermore, functions are separated from facilities. While purchasing particular functions or facilities enables the requesting carrier to access the variety of elements associated with these elements, the carrier is not obligated automatically to offer specific services. Section 251(c)(2) should be interpreted as allowing the carrier to provide either telephone exchange service or exchange services or both. Carriers should have the flexibility of providing local exchange to end users and exchange access to other carriers without operating under artificial marketing mandates, which are unwarranted in a competitive environment.

Conversely, 251(c)(3), does not restrict how a requesting carrier may use unbundled elements in so far as they are employed to provision telecommunication services. The elements may be combined to provision services that mirror the incumbent's retail offerings, or their combination may yield unique services exclusively provided by the new entrant. The ability to design its own services bestows on the carrier the status of a truly viable competitor. The competitive power of imaginatively combining network elements should not be negated by imposing prohibitions or restrictions.

While resale of the LEC's retail services limits the entrant to the pricing and market strategies of the incumbent LEC, the unbundled network platform enables the entrant to develop its own competitive platform and thereby strengthens its commitment to the marketplace. This feature of combining network elements also points to the need to allow interconnection to AIN triggers.

Section 251(c)(3) then is the critical solution to the problem of introducing robust competition in an industry in which entrants will be seriously disadvantaged by the initial lack of outside plant facilities. An overnight replication of an incumbent's network cannot be anticipated realistically. But it is this provision that supplies the mechanism to initiate substantive competition. Through this means, the entrant is able to attract a customer base; and a customer base will attract infrastructure investment for network construction and switch acquisitions.

Unbundling should not be restricted to "essential" elements; this restriction would negate the full potential of the law. Indeed, ACTA submits that approaching the resolution of this problem by attempting to list all the unbundled network elements that should be available is a cumbersome and unnecessarily difficult approach. Rather, the proper approach is to declare all network elements of any type to be available on an unbundled basis. Any restrictions would then have to be proven to merit consideration by specific evidence of some substantive factor that demonstrates factually that unbundling of a specific network element is: (1) not in the public interest; or (2) would produce anticompetitive results.

Under the public interest standard, unbundling could only be restricted if it were shown that to do so is technically infeasible, uneconomical, or would degrade network performance or reliability. Further, should claims of infeasibility or network degradation prove frivolous, the incumbent LEC would be subject to monetary fines and damages equal to the lost profits and additional costs incurred by the requesting carrier, occasioned by the delay in refusing to unbundle the element on frivolous grounds. Should an incumbent LEC, despite fines and damages in individual cases, engage in a pattern of frivolous claims of infeasibility or network harm, any further claim would be considered presumptively invalid and the LEC ordered to cease

and desist or face suspension of its operating authority, such as, its suspension to advertise, market or sell any competitive services until the violation against unbundling was cured.

Proof that unbundling would lead to anticompetitive results would rest on showings that by unbundling as requested by a particular carrier would provide that carrier with market power over a segment of the market for telecommunications service. Any restriction imposed under this standard would be required to be lifted as soon as it were capable of being demonstrated that other carriers could also use the unbundled element to provide competitive services.

Coupled with ACTA's open door approach on unbundling all elements, except for proven cases of infeasibility or anticompetitveness, a list of elements is still helpful in identifying elements known to be essential or highly desirable. ACTA's lists thus far includes the following:

Local loop, composed of

Network Interface Device/Unit
Loop Distribution
Digital Loop Systems
Loop Feeder
Loops configured as 2-wire, 4-wire, ISDN (Primary and Basic), plus
(Efficient, industry standard compliant means of connecting unbundled loops should be made available.)

Local Switching:

Line Port
Trunk Port
Switch Capacity
Signaling/Database necessary to create or bill call path
Switch related functions -
dial tone,
Touch Tone,
call processing and routing,
911,
411,
operator support,
presubscription,

vertical service functionality such as call waiting, call forwarding, etc., hunting,
DID signaling,
access (inclusive of unmediated connections) to AIN/SS7 signaling, and databases including SCP and SMS interconnection to STPs.

Network Usage Functionality:

Routing of carrier-designated traffic to appropriate network, and
Seamless completion of non-carrier designated (default) traffic using incumbent's network

Ancillary Functions:

Access to ordering/provisioning/repair and maintenance systems,
Billing information and call detail records to render end-user and carrier billing, and
Electronic interfaces with operational systems supporting above functions.

Unbundling Switching Capacity

The Commission cites the consideration being given by the Illinois Commerce Commission ("ICC") to the specific issue of network unbundling as it relates to switching capacity (NPRM ¶100). The Commission mentions the ICC's "local switching platform" approach to unbundling the local switch. ACTA submits that the record testimony in the ICC proceedings is instructive and should be incorporated here.

> Under the platform configuration . . . the switching element becomes vital. (Testimony of Joseph Gillan, expert witness).

Then an ICC staffer defined the platform switching element as -

> . . . all services and functionalities that are provided by a switch or end-office. These service include: telephone number and directory listing; dial tone; announcements; access to operators, usage and interexchange carriers; originating and terminating switching; custom calling features (call forwarding, call waiting, etc.,); and CLASS features (caller ID, call return, etc.)

The Commission is urged to consider this testimony in its deliberations of the issue of unbundling local switching.

AIN Unbundling

ACTA supports the unbundling of AIN triggers as part of a logical progression of network unbundling. Access to the LECs' intelligent networks can be facilitated through the interconnection of a third party SCP and STP to LEC SS7 networks (without gateway SCPs or mediation devices[1]) and third party access to LEC SSP triggers.

Number Portability

Number portability must be ordered to be in place by a date certain. While the Commission previously has recognized the technical limitations of interim number portability mechanisms such as remote call forwarding, the Commission also should recognize how incumbent LECs are using these methods to limit the effectiveness of competition. For example, LECs are declaring that access revenues may be withheld when a telephone number is ported using remote call forwarding.

Pricing Principles

Unbundled elements and interconnection must be cost-based, which should be defined as TSLRIC. TSLRIC already includes a profit as allowed by the Act. Prices should be supported by cost studies and filed as tariffs. Cost studies also should be filed to determine avoided costs applicable to resale of LEC resale services. These prices also should be tariffed.

Filing cost studies to support the prices of both unbundled elements and the wholesale rates for resold retail services is essential. States such as Colorado and Louisiana have required

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[1] Mediation devices increase post-dial delays and significantly increase costs. However, it is recognized that some mediation functions are required.